amo REPORT

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RESPONSE TO THE DRAFT WETLANDS POLICY STATEMENT

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
AUGUST, 1989

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ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario is a non-partisan voluntary organization united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total inter-governmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some seven hundred municipal governments throughout Ontario. The governing body is composed of some eighty municipal elected and appointed officials, who in turn represent a wide range of municipal government interests.

The following Sections and affiliated municipal professional associations form an important part of the Association's structure and, therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

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- County and Regional Section
- Large Urban Section
- Northern Ontario Section (FONOM/NOMA)
- Rural Section (ROMA)
- Small Urban Section (OSUM)

Association Affiliates:

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- Association of Municipal Tax Collectors of Ontario
- Municipal Engineers Association
- Ontario Municipal Administrators Association
- Ontario Municipal Personnel Association
- Ontario Municipal Social Services Association
- Society of Directors of Municipal Recreation of Ontario
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EXECUTIVE SUMMARY

In this "Response to the Draft Wetlands Policy Statement" the Association of Municipalities of Ontario is primarily concerned with the problems involved in using the municipal planning process to implement a provincial environmental protection policy.

The issues raised can be grouped in three main categories, the limits of the wetland evaluation system; the inconsistent use of planning terminology; and the clarification of the roles of the various levels of government and pertinent agencies in wetland protection.

This document also puts forward fifteen recommendations which, while remaining in keeping with the spirit of the draft policy statement, aim to codify and integrate municipal concerns.

INTRODUCTION

The Association of Municipalities of Ontario strongly supports the Ministries of Natural Resources and Municipal Affairs in their initiative to protect Southern Ontario's remaining wetlands from further dissipation. The proposed Wetlands Policy Statement is a timely document, and the Association appreciates the opportunity to respond. AMO also notes with approval that the Implementation Guidelines accompanying the policy statement were issued concurrently with the policy statement.

Although much of the emphasis of this response lies in AMO's specific concerns with the use of the municipal planning process as the mechanism for protecting wetlands, the Association would like to draw attention to one very important issue; a wetland protection program cannot be carried out in isolation. It is becoming evident that wetlands are vital link in the province's hydrological system, as are floodplains and headwater areas. Wetland protection must be implemented within the greater framework of a province-wide water conservation program. This will require the continued co-operation and consultation between various levels of government as well as inter-ministerial co-ordination. The Association of Municipalities of Ontario approves of the Wetlands Policy Statement, but only as one component of an integrated conservation program.

To this end the Association would also encourage the Ministry of Natural Resources in its efforts to develop a system for the effective evaluation of wetlands in Ontario's Northern municipalities. Although the Wetlands Policy Statement applies to the whole province, currently Northern wetlands are evaluated on a case by case basis. AMO's Northern members are anxious for a standard system, modified along the lines recommended in this response, in order that the planning process can be applied effectively in their municipalities as well.

1. The Evaluation System

An Evaluation System for Wetlands of Ontario: South of the Precambrian Shield was developed in order to assess the relative value of remaining wetlands in Southern Ontario. The system is a tool to be used in the planning process in the face of ever-increasing development pressure. "The ultimate aim is to be able to rate wetlands with regard to their relative value so that people who make decisions about land-use will have a means through which to ascertain which wetlands are the more valuable."

Briefly, the system measures wetland values by analyzing various factors which are grouped under four components, biological, hydrological, social and special features. Scores are assigned for each component (based on the contributing factors) and then added together to produce a final evaluation. A wetland classification number (from I to VII) is then assigned based on the total score. The higher the score, the more significant a wetland is deemed in relation to the entire ecosystem of Southern Ontario. Thus, Class I & II wetlands are defined as Provincially Significant, Class III, Regionally Significant, and Class IV to VII, Locally Significant.

To date, the Ministry of Natural Resources has classified approximately 2000 or 95% of Southern Ontario's wetlands. This means that the affected municipalities are presented with a *fait accompli* as to the designation of wetlands within their own jurisdictions. These designations, in particular Classes I & II, are to guide municipalities' long-term planning objectives as to wetlands protection measures, in accordance with Section 3(5) of the Planning Act, 1983.

The Association of Municipalities of Ontario states that the evaluation system should be open for review and re-consideration when necessary, with a possible formal appeals mechanism if MNR/municipal consultation is unsuccessful. This concern arises primarily from the inherent weakness of the evaluation system's scoring structure. Although all four components were given an equal number of points against which a particular wetland is measured, some components are more important than others. The Association considers the hydrological component to be primary; the biological, social and special features clearly result from the unique hydrological character of a wetland. In addition there is the question of subjectivity. While hydrological and biological factors can be scientifically quantified, the social component cannot be, and will differ markedly from one municipality to the other, if only because of a municipality's own perception of the social value of its wetlands.

Recommendation #1

> **That the Provincial Wetlands Evaluation System be provided with an appeals mechanism, by which a municipality and landowner can appeal a wetland designation.**

Recommendation #2

> **That the details of the scoring system be provided to each of the affected municipalities and landowners.**

2. Priority of Policy Statements

Section 3(5) of the Planning Act, 1983 states:

> "In exercising any authority that affects any planning matter, the council of every municipality, every local planning board, every Minister of the Crown and every ministry, board, commission or agency of the government, including the Municipal Board and Ontario Hydro, shall have regard to policy statements issued under subsection (1).

Section 4.1 of the Wetlands Policy Statement, which is issued under the authority of the above-mentioned subsection (1) of Section 3 of the Act, states:

> "The protection of provincially significant wetlands be given primary consideration in the evaluation of any development proposal on or adjacent to the wetlands."

Although this statement appears to conform explicitly to the directives of its "parent" Act, it is important to pay attention to the following interpretation the WPS establishes for itself:

> "This Provincial Policy Statement...does not supersede or take priority over other policy statements issued under this Act, or any other policy approved by the Lieutenant Governor in Council for any specific area in the Province."

The Implementation Guidelines state:

> "In situations where two or more Policy Statements appear at variance, no one single statement is to take precedence over another."(p.6)

It appears therefore, that the Wetlands Policy Statement does not take precedence over any other current or future policy statement. It is not clear as to whether the Wetlands Policy Statement has priority over legislation (as opposed to policy statements.) It must be pointed out that numerous pieces of legislation, under the jurisdiction of different ministries, already apply to wetlands protection in various ways, e.g. The Conservation Authorities Act, The Ontario Heritage Act, The Environmental Assessment Act, etc. AMO would like to see that the wording of the Wetlands Policy Statement and the Implementation Guidelines be consistent and concise enough to ensure that the proposed Wetlands Policy is equal to all other policy statements under the Planning Act.

AMO's position on the general question of the priority of policy statements was expressed previously in the AMO Response to Draft Housing Policy Statement. Recommendation No.4 is a restatement of one of the recommendations of that document, as the Association feels strongly that as more policies are implemented in the future, the potential for conflict and confusion for municipalities and other sectors in the development area will increase.

Recommendation #3

> **That the word "primary" be removed from Section 4.1 of the Wetlands Policy Statement so that it reads:**
>
> > **"The protection of provincially significant wetlands be given consideration in the evaluation of any development proposal on or adjacent to the wetlands."**

Recommendation #4

> **The Provincial Government must establish a formal procedure for expressing Provincial priorities with respect to conflicting or potentially conflicting statements, guidelines and any other vehicle for expressing provincial interest with respect to municipal planning. This procedure should provide a clear written statement of provincial priorities to municipalities in advance of their creation and/or review of official plans, zoning by-laws and other Planning Act tools.**

3. Compatibility

The Wetlands Policy Statement defines "Compatible land uses" as:

> "those which, when they occur on or adjacent to a wetland will maintain or improve the overall wetland evaluation score and classification, as assigned by the Evaluation System, as well as essential features of the wetland specified by the Ministry of Natural Resources."

In addition Section 4.2 of the Wetland Policy Statement and the Implementation Guidelines establish a general framework by which a municipality can ensure compatible land-use on or adjacent to a wetland.

In discussions with municipal planning staff, AMO has perceived that there is a consensus that the use of the term "compatible" in the above-mentioned context differs from the conventional planning use of the term, particularly in respect to development. Conventional use usually accepts some impact, while the policy statement definition does not appear to. In view of AMO's concern regarding the usefulness of the Evaluation System, it is felt that the Evaluation System should not be relied on as a basis for compatibility criteria, and that the policy statement's definition should conform to accepted planning understanding of the term.

Recommendation #5

> **That the Ministry of Natural Resources be prepared to provide specific examples of compatible uses for Class I & II wetlands.**

Recommendation #6

> **The Wetlands Policy Statement definition for "Compatible land-use" be revised to delete reference to the Evaluation System and that it correspond to current planning use of the term, allowing development that does not adversely effect the wetland.**

4. Legal Non-conforming Use

Section 44(2)(a)(i) of the Planning Act, 1983, allows the enlargement or extension, that is, **some** development, on land or structures that are zoned "legal non-conforming use."

The Implementation Guidelines for the Wetland Policy Statement, in setting out proposed protective measures to be established by official plans (p.14) and zoning by-laws (p.18), recognize existing legal non-conforming uses but allows **no** new development.

AMO points out that since official plans and zoning by-laws are the designated vehicles for implementing the protection measures set out in the Wetland Policy Statement, and they are mechanisms of the Planning Act, there should be consistency between the Policy Statement and the Planning Act definitions of "legal non-conforming use."

Recommendation #7

> **The provisions of the Planning Act should apply in respect to the definition of "legal non-conforming use".**

5. Adjacent Lands

There appears to be a discrepancy between the wording of the Wetlands Policy Statement and its own implementation guidelines in respect to the use of zoning by-laws as a protection mechanism. Section 3(1) of the policy statement states:

> "Provincially significant wetlands be placed in a restricted zoning category which permits **only wetlands** and compatible land uses"

The Implementation Guidelines state:

> Where the Official Plan recognizes that certain compatible development may occur, **the wetland and lands adjacent to the wetland** must also be placed within a Restrictive Zoning category..."(p.18)

AMO feels that it should be made perfectly clear within the text of the policy statement and the Implementation Guidelines, that the restrictive zoning category applies **only** to the wetland. This would ensure that responsibility for protecting adjacent lands is left to the local municipality. It is clear from many responses to the Wetlands Policy Statement by individual municipalities, that Ontario's municipalities already recognize the importance of wetland protection and that recognition is already reflected in protective zoning and official plan designations.

It appears that there is altogether a need to distinguish between wetland sites and adjacent lands. Currently the policy statement makes no distinction between actual wetlands sites and lands adjacent to these sites, applying the same restrictions and considerations for land use compatibility to each. There are likely many instances where the sensitivity to use of land varies significantly between a wetland site and adjacent lands. The Guidelines themselves maintain that some wetland types are more tolerant of disruption. It is the Association's position that local authorities should have the option to deal with adjacent lands, in order that local conditions can be taken fully into consideration.

Recommendation #8

> **The Implementation Guidelines should be brought into line with the Wetlands Policy Statement, in order to specify that the policy applies to wetlands only and not adjacent lands.**

Recommendation #9

> **In relation to adjacent lands, protection measures and compatible uses should be left to the local municipal planning process.**

6. Ministerial Support

The proposed Wetlands Policy Statement as it currently stands commits the Ministry of Natural Resources and the Ministry of Municipal Affairs to support municipal efforts to protect provincially significant Class I & II wetlands. Regionally significant Class III wetlands and locally significant IV to VII wetlands protection is at the discretion of the municipality:

> "This Provincial Policy Statement may be applied by local or regional municipalities to other wetlands of regional or local significance."

The Wetlands Policy Statement also appears to allow the designation of unclassified wetlands as locally significant, by a local planning authority (WPS, bottom p.2).

The policy statement does not commit itself to supporting a municipality if it does take the initiative to apply the policy to other than provincially significant wetlands **though it strongly encourages the latter.** AMO is particularly concerned that a challenge to a municipal initiative of this sort (at the Ontario Municipal Board for example) would be fully supported by the involved ministries.

Recommendation #10

> **That the Ministries of Natural Resources and Municipal Affairs commit themselves to full and continuous support of a municipal initiative in any wetland protection program.**

7. Wetland Boundaries

Wetlands in Ontario, be they fens, bogs, swamps or marshes are ecosystems which are characterized by particular. unique types of vegetation. This means that in the field, it is relatively easy to perceive the boundary of the wetland, which by its very nature is irregular in shape.

The Wetlands Policy Statement aims at protecting the wetland through the planning mechanism of the zoning by-law, which by its very nature has a regular shape, e.g. surveyed property lines, roads, ditches and other relatively obvious and mappable boundaries.

Zoning is a precise tool, and in some instances it will be difficult to plot the precise boundaries of a wetland.

Recommendation #11

> **The Ministry of Municipal Affairs consult with municipal planning departments on order to help develop standards and techniques to map wetland areas accurately and effectively.**

8. Public Awareness

In 1984, in tabling its "Guidelines for Wetlands Management", the Ontario government stated that the protection of wetlands was "one of the important conservation issues" that it faced. By then over 80% of Southern Ontario's wetlands had been lost, and there was a growing perception that immediate action had to be taken to stall any further loss. The 1984 "Guidelines" and the proposed policy statement, which will eventually replace them, were devised as tools to aid in the protection of the remaining wetlands.

Although these tools are designed primarily for the use of planning professionals, the planning process itself is a public one. The pre-requisite for successful development is community support for local initiatives.

AMO would like to see some attempts to "package" the policy statement in such a way that better emphasizes the positive and tangible benefits of wetlands protection. One way this could be done is by further expanding the background section of the Wetlands Policy Statement to elaborate on the purpose and goals of the government's wetlands protection program. The Flood Plain Planning Policy Statement has a good example of the type of

more thorough background information that the Association would like to see in the Wetland Policy Statement. As mentioned earlier, the municipal responses to the Wetlands Policy Statement indicate that many municipalities already perceive the importance of wetland protection and have programs to that effect in place. In addition, municipalities' own studies show that there is quite a high level of public support for water conservation measures, including wetlands protection. However, a clearer statement from the government - both in the text of the Wetland Policy Statement and through a co-ordinated public education program - on the tangible benefits of protecting Ontario's wetlands will help municipalities defend their own actions in that direction.

Recommendation #12

> **The Background section of the Wetlands Policy Statement be expanded to emphasize the importance and necessity of the wetlands protection program.**

Recommendation #13

> **The Ministries of Natural Resources and of Municipal Affairs commit themselves to a public education program aimed at creating greater public awareness of the importance of wetlands .**

9. Conservation Authorities

Wetlands play a crucial role in the hydrology of watersheds. These "aquatic sponges" serve as flood control by storing rainfall and snowmelt during peak periods and releasing it slowly into streams and lakes during drier seasons. This is one of the primary reasons that wetland protection is an important part of Ontario's Conservation Authorities' water resource strategy. In fact, to that end the Conservation Authorities have an active wetlands acquisition program, and currently own 15,843 hectares of wetlands.

The role of Conservation Authorities in the protection of wetlands as laid out in the Wetlands Policy Statement is at best vague, and careful reading reveals a blatant contradiction. Section 1.1 of the policy statement states:

> "All municipalities, planning boards and **resource management agencies** identify and protect provincially significant Class I & II wetlands within their jurisdictions..."

Yet the Implementation Guidelines state:

> "The Policy Statement addresses wetlands from a land use perspective and can not directly control activities such as grading, draining and filling." (page 2, Implementation Guidelines)

Since these activities can be carried out by Conservation Authorities in their capacity as watershed resource managers as empowered under Section 21 of the Conservation Authorities Act, 1980, it is conceivable that a Conservation Authority might have to choose between the directives of the Policy Statement and its responsibilities vis-a-vis watershed management. Considering the importance of Conservation Authoroties in the water conservation area, it is crucial that their role in relation to wetlands management and watershed management is clarified. The unavoidable question is whether it is the Conservation Authorities who should have over-all responsibility for administering Southern Ontario's wetlands? To be truly effective, the wetlands protection program should be undertaken in the broader context of watershed management. This is in keeping with the Association's position that the task of protecting wetlands' hydrological component is of primary importance.

Recommendation #14

The Conservation Authorities' role in wetland protection should be specifically defined.

Recommendation #15

The Province should provide additional funds to the Conservation Authorities, regional municipalities and municipalities in order that they can continue acquiring wetlands.

LIST OF RECOMMENDATIONS

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Recommendation #2

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